

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA**

STUART SHOWALTER,	)	
	)	
Plaintiff,	)	
vs.	)	No. 1:08-cv-01283-SEB-TAB
	)	
THE TOWN OF THORNTOWN, et al.,	)	
	)	
Defendants.	)	

**Entry on Counterclaim**

The defendants joined in a counterclaim filed with their answer on June 24, 2009. The counterclaim asserts that the complaint violates Rule 11(b) of the *Federal Rules of Civil Procedure* and that the “plaintiff’s complaint is frivolous.” Although the plaintiff never filed an answer to the counterclaim, the counterclaim plaintiffs have not sought an entry of default or a default judgment as to the counterclaim.

An asserted violation of Rule 11 is not independently actionable. *Stark v. Government Accounting Solutions, Inc.*, 2008 WL 4683289 at 2\* (S.D. Ohio Oct. 22, 2008) (“[A] counterclaim based on Rule 11 fails to state a claim upon which relief can be granted.”); *see also Pet Silk, Inc. v. Jackson*, 2010 WL 148145 (S.D. Tex. Jan. 14, 2010). Similarly, asserting that a complaint is “frivolous” hardly asserts a viable claim for relief. The court further notes that the relief sought through the counterclaim is the award of costs and attorney fees, which may readily be awarded in appropriate circumstances pursuant to 42 U.S.C. § 1988.

The counterclaim plaintiffs seemingly seek the entry of summary judgment as to the counterclaim—having briefly mentioned this in their supporting brief, though not in the motion for summary judgment itself. In light of the foregoing, however, the counterclaim plaintiffs shall have **through May 12, 2010**, in which to **either withdraw** the counterclaim or **identify and support** the legal sufficiency of any recognized claim(s) asserted therein.

**IT IS SO ORDERED.**

Date: 04/20/2010



SARAH EVANS BARKER, JUDGE  
United States District Court  
Southern District of Indiana

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